

1937

c 106 Surrogate Courts Act

Ontario

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CHAPTER 106.

The Surrogate Courts Act.

INTERPRETATION.

Interpreta-
tion.

1. In this Act,—

“Adminis-
tration.”

- (a) “Administration” shall include all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes;

“Common
form busi-
ness.”

- (b) “Common form business” shall mean the business of obtaining probate or administration where there is no contention as to the right thereto, including the passing of probate and administration through a surrogate court when the contest is terminated, and all business of a non-contentious nature to be taken in a surrogate court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging caveats against the grant of probate of administration;

“County.”

- (c) “County” shall include provisional judicial district;

“Matters
and causes
testament-
ary.”

- (d) “Matters and causes testamentary” shall include all matters and cause relating to the grant and revocation of letters probate of wills or letters of administration;

“Will.”

- (e) “Will” shall include a testament, and all other testamentary instruments of which probate may be granted. R.S.O. 1927, c. 94, s. 1.

SURROGATE COURTS.

A surrogate
court to be
in each
county.

2. There shall be in and for every county a court of record to be styled “The Surrogate Court of the County (*or* united Counties *or* District) of ———” (*inserting the name of the county or united counties or district*). R.S.O. 1927, c. 94, s. 2.

3. Every such court shall be provided with a suitable seal ^{Seal.} to be approved of by the Lieutenant-Governor. R.S.O. 1927, c. 94, s. 3.

4. The sittings of the court shall be held in the county ^{Sittings, where held.} town and shall be presided over by the judge thereof. R.S.O. 1927, c. 94, s. 4.

JUDGES.

5. The judge of the surrogate court shall be appointed ^{Appointment.} by the Lieutenant-Governor in Council, and shall hold office during good behaviour and residence in the county for which he is appointed, and shall be subject to be removed by the Lieutenant-Governor in Council for inability, incapacity or misbehaviour established to his satisfaction. R.S.O. 1927, c. 94, s. 5.

6.—(1) In case of a vacancy in the office or of the illness ^{Illness, absence or vacancy in office of judge.} or absence, or at the request in writing, of the judge of the surrogate court of any county or district any judge who has authority to preside over the county or district court of the county or district, or in the case of a county or district for which there is only one judge, any barrister of ten years' standing, on the request in writing of the judge of the surrogate court or of the Attorney-General for Ontario, may act as judge of the surrogate court.

(2) Except in the case of a vacancy, where a judge so acts ^{Fees in such cases.} he shall not be entitled to the fees, unless with the consent of the judge of the surrogate court.

(3) Where a judge of a county court, who is also judge ^{When judge-ship of surrogate court vacated.} of the surrogate court, vacates his county court judgeship, unless the Lieutenant-Governor in Council otherwise directs, he shall thereby vacate his judgeship of the surrogate court. R.S.O. 1927, c. 94, s. 6.

7. Every judge of a surrogate court, before entering upon the duties of his office, shall take and subscribe the following ^{Oath of office.} oath before some person appointed by the Lieutenant-Governor to administer the same, that is to say:

"I, _____, do swear that I will truly and faithfully, according to the best of my skill and knowledge, execute the duties, powers and trusts of Judge of the Surrogate Court of the County (or United Counties or District), of _____
So help me God."

R.S.O. 1927, c. 94, s. 7.

8. The judge of the surrogate court of a county forming ^{Powers and duties of judge.} part of a county court district may exercise and perform in

any part of such district any power or duty assigned to the judge of a surrogate court by any statute of Ontario. 1937, c. 75, s. 2, *part.*

SURROGATE CLERK AND REGISTRARS.

Appointment
of surrogate
clerk, his
duties.

9. There shall be an officer, to be called the surrogate clerk, who shall be deemed an officer of the Supreme Court, and shall be appointed by the Lieutenant-Governor in Council. R.S.O. 1927, c. 94, s. 8.

Registrar.

10. There shall be a registrar for every court who shall be appointed by the Lieutenant-Governor in Council. R.S.O. 1927, c. 94, s. 9.

Oath of
registrar.

11. Every registrar, before entering upon the duties of his office, shall take and subscribe the following oath:

"I, _____, do swear that I will diligently and faithfully execute the office of Registrar of the Surrogate Court of the _____, and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done, of any will or testamentary paper, or other document or paper committed to my charge. So help me God."

R.S.O. 1927, c. 94, s. 10.

Security to
be given by
registrars.

12. Every registrar, before entering upon the duties of his office, shall furnish such security as may be required by the Lieutenant-Governor in Council for the due performance of the duties of his office, and the provisions of *The Public Officers Act*, relating to the giving of security, shall apply to such security. R.S.O. 1927, c. 94, s. 11.

Rev. Stat.,
c. 16.

Registrar's
office.

13.—(1) The registrar shall keep his office in the court house of the county, and a room therein shall be provided for that purpose, and, in the event of there being no available room therein, then at such place in the county town as the judge directs.

In the
County of
Essex.

(2) The registrar of the surrogate court of the County of Essex may keep an office in some convenient place in the city of Windsor, subject to such arrangements as the county council of the County of Essex may assent to, and subject also to the approval of the Lieutenant-Governor in Council. R.S.O. 1927, c. 94, s. 12.

Depository
for the wills
of living
persons.

14. The office of the registrar shall be a depository for all wills of living persons given to him for safe keeping, and the registrar shall receive and keep the same upon payment of such fees and under such regulations as may be prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 13.

15. The registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed are granted, and all other papers used in any matter in his court, subject to such regulations as may be prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 14.

Preservation of testamentary instruments, papers, etc.

16. On the third day of every month, or oftener if required by the surrogate court rules, every registrar shall transmit by mail to the surrogate clerk a list, in such form and containing such particulars as may be prescribed by such rules, of the grants of probate and administration made by his court up to the last day of the preceding month, and also a copy, certified by him to be a correct copy, of every will to which the same relate, and he shall in like manner make a return of every revocation of grant of probate or administration. R.S.O. 1927, c. 94, s. 15.

Transmission to surrogate clerk of list of grants, etc.

17. Neither the surrogate clerk nor a registrar shall for fee or reward draw or advise upon any will, or upon any paper or document connected with the duties of his office, for which a fee is not expressly allowed to him by the tariff. R.S.O. 1927, c. 94, s. 16.

Surrogate Clerk and Registrars not to take fees for drawing or advising on certain documents.

(NOTE—For returns by Registrars of Surrogate Courts, see *The Public Officers' Act.*)

Rev. Stat., c. 16.

JURISDICTION AND POWERS OF THE SURROGATE COURTS.

18. Subject to the provisions of *The Judicature Act*, all jurisdiction and authority in relation to matters and causes testamentary, and in relation to the granting or revoking probate of wills and letters of administration of the property of deceased persons, and all matters arising out of or connected with the grant or revocation of grant of probate or administration, shall be vested in the several surrogate courts. R.S.O. 1927, c. 94, s. 17.

Testamentary jurisdiction to be exercised by the surrogate courts. Rev. Stat., c. 100.

19. An action for a legacy or for the distribution of a residue shall not be entertained by any surrogate court. R.S.O. 1927, c. 94, s. 18.

No action for legacy or distribution of residue.

20. Letters of administration shall not be granted to a person not residing in Ontario, but this shall not apply to resealing letters under section 72. R.S.O. 1927, c. 94, s. 19.

Administration not to be granted to non-resident.

21. Letters probate shall not be granted to a person not resident in Ontario or elsewhere in the British Dominions, unless such person shall have given the like security as is required from an administrator in case of intestacy, unless in

Probate or letters ancillary to persons not residing in British Dominions.

the opinion of the judge, such security should, under special circumstances, be dispensed with or be reduced in amount. R.S.O. 1927, c. 94, s. 20.

Grant, of probate or administration jurisdiction.

22.—(1) The granting of probate or letters of administration shall belong to the surrogate court of the county in which the testator or intestate had at the time of his death his fixed place of abode.

Where decedent had no domicile in Ontario.

(2) If the testator or intestate had no fixed place of abode in, or resided out of Ontario at the time of his death, the grant may be made by the surrogate court of any county in which the testator or intestate had property at the time of his death.

When any court may make grant.

(3) In other cases the granting of probate or letters of administration shall belong to the surrogate court of any county. R.S.O. 1927, c. 94, s. 21.

Where surrogate judge is applicant.

23. Where the person or one of the persons entitled to apply for probate of a will or for letters of administration is judge of the court having jurisdiction in the matter, and he does not renounce, application by him for such probate or letters, and any subsequent application in the matter of the estate by him or by any other person may be made to the judge of the surrogate court for an adjoining county, who shall have the same authority as to such application, and generally in all matters connected with the estate, as if he were the judge of the surrogate court having jurisdiction, and he shall be entitled to the same fees, to be paid in stamps if his fees have been commuted, as he would have been entitled to if the application had been made or proceedings had been taken in the court of which he is judge. R.S.O. 1927, c. 94, s. 22.

Effect of probate or letters granted without jurisdiction.

24. Letters probate and letters of administration granted by a surrogate court not having jurisdiction to grant the same shall, nevertheless, until revoked, have the same force and effect as if they had been granted by a surrogate court having jurisdiction. R.S.O. 1927, c. 94, s. 23.

Effect of probate and administration.

25. Letters probate and letters of administration shall have effect in all parts of Ontario. R.S.O. 1927, c. 94, s. 24.

POWER TO TRY BY JURY.

Trial of questions of fact by a jury.

26.—(1) The court may cause any question of fact arising in any proceeding therein to be tried by a jury before the judge of the court, and such trial shall take place at

some ensuing sittings of the county court for the county, and be conducted in the same manner as other trials by jury in such court, and the parties shall be entitled to their right of challenge, and, for all purposes of, or incidental to the trial of questions of fact by a jury, the court and the judge thereof shall have the same jurisdiction, power and authority in all respects as belong to the county courts, and the judges thereof, for like purposes.

(2) The question directed to be tried by a jury shall be reduced into writing in such form as the court directs. R.S.O. 1927, c. 94, s. 25. The issue.

27.—(1) Whether any suit or other proceeding is or is not pending in the court with respect to any probate or administration, every surrogate court may, on motion or otherwise in a summary way, order any person to produce and bring before the registrar, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person. Production of instruments purporting to be testamentary.

(2) If it is not shown that such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court or before the registrar, or such person as the court may direct, or upon interrogatories respecting the same, and to produce and bring in such paper or writing, and such person shall be subject to the like process in case of default in not attending or in not answering questions or interrogatories or not bringing in such paper or writing, as he would have been subject to if he had been a party to a suit in the court and had made such default, and the costs of such motion or other proceeding shall be in the discretion of the court. R.S.O. 1927, c. 94, s. 26. Examination of persons touching such instruments.

28.—(1) Any contentious cause or proceeding may be removed into the Supreme Court by order of a judge of such Court if it is of such a nature and of such importance as to render it proper that the same should be disposed of by the Supreme Court, and the property of the deceased exceeds \$2,000 in value. Removal of proceeding to Supreme Court.

(2) The judge may impose such terms as to payment of or security for costs or otherwise as he may deem just. Terms.

(3) The judgment of the Supreme Court in any cause or proceeding so removed shall be certified to the registrar Transmission of judgment to surrogate court.

of the surrogate court from which the cause or proceeding was removed. R.S.O. 1927, c. 94, s. 27.

APPEALS.

Appeal to
Court of
Appeal in
certain cases.

29.—(1) Any party may appeal to the Court of Appeal from an order, determination or judgment of a surrogate court, in any matter or cause when the value of the property affected by such order, determination or judgment exceeds \$200.

New trial.

(2) A motion for a new trial after a trial by jury shall be deemed an appeal.

Appeal from
audit of ac-
counts, adju-
dication of
claim, or
adjudication
on title when
amount ex-
ceeds \$200.

(3) An appeal shall also lie to a judge of the Supreme Court from any order, decision or determination of the judge of a surrogate court, on the taking of accounts or upon an adjudication or to a claim or demand or as to the title to any property if the amount involved exceeds \$200 in like manner as from the report of a Master under a reference directed by the Supreme Court. R.S.O. 1927, c. 94, s. 28.

PRACTICE.

Proofs to lead grant.

Where de-
ceased
resided in
Ontario.

Affidavit as
to place
of abode.

30.—(1) On every application for probate of a will or for letters of administration where the deceased was resident in Ontario at the time of his death, his place of abode at the time of his death shall be made to appear by affidavit of the person or one of the persons making the application, and thereupon and upon proof of the will, or in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted.

Death or
absence of
witnesses
of soldier's
or sailor's
will.

(2) Where upon the application for probate of the will of any soldier, mariner, or seaman who was on active military or naval service at the time of the execution of the will, it appears that the witnesses, are dead or are incompetent, or that the whereabouts of the witnesses, or either of them, is unknown, the judge of the surrogate court to whom such application is made, may accept such evidence as he may consider satisfactory as to the validity and proper execution of such will notwithstanding anything contained in this Act or in the rules or regulations of the surrogate court to the contrary.

(3) No probate or letters of administration shall be granted unless and until the judge is satisfied that there is no under-valuation of the estate of which probate or administration is being sought.

Probate not to be granted until judge has proof of no under-valuation.

(4) In cases where there is a necessity for the speedy issue of probate or administration and there is difficulty in ascertaining the true valuation of an estate, the judge may report the same to the Treasurer of Ontario, and such probate or administration may be issued upon the written consent of the Treasurer or someone authorized by him to consent in such cases.

Issue of probate before valuation.

(5) The judge before granting an order for probate or letters of administration shall satisfy himself whether any transfer of dutiable property has been made by the testator or intestate since 1892, and if such a transfer has been made he shall forthwith notify the Treasurer of Ontario, and probate or letters of administration shall not be issued in such a case without the written consent of the Treasurer or someone authorized by him to consent in such cases.

Duty of judge as to transfers of property of deceased before death.

(6) The Lieutenant-Governor in Council may make rules and regulations for the better carrying out of the provisions of subsection 3 to 5. R.S.O. 1927, c. 94, s. 29.

Regulations.

31. On every application for probate of a will or for letters of administration where the deceased had no fixed place of abode in or resided out of Ontario at the time of his death, the same shall be made to appear by affidavit of the person or one of the persons making the application, and that the deceased died leaving property within the county to the surrogate court of which the application is made, or leaving no property in Ontario, as the case may be, and that notice of the application has been published at least three times successively in the *Ontario Gazette*, and thereupon and upon proof of the will or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted. R.S.O. 1927, c. 94, s. 30.

Where deceased had no fixed place of abode in Ontario. Affidavit.

32. The affidavit as to the place of abode and property of the deceased under sections 30 and 31, for the purpose of giving a particular court jurisdiction shall be conclusive for the purpose of authorizing the exercise of such jurisdiction, and no grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the deceased had no fixed place of abode within the particular county, or had not property therein at the time of his

Conclusiveness of affidavits.

When proceedings may be stayed.

death, but in case it is made to appear to the judge of a surrogate court before whom the application is pending, that the place of abode of the deceased, or the situation of his property, has not been correctly stated in the affidavit, the judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he may deem just. R.S.O. 1927, c. 94, s. 31.

Proof, etc., requisite for obtaining grant to party not next of kin to intestate.

33. Where application is made for letters of administration by a person not entitled to the same as next of kin of the deceased, an order shall be made requiring the next of kin, or others having or pretending interest in the property of the deceased, resident in Ontario, to show cause why the administration should not be granted to the person applying therefor; and if neither the next of kin nor any person of the kindred of the deceased resides in Ontario, a copy of the order shall be served or published in the manner prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 32.

Temporary administration in certain cases.

34.—(1) If the next of kin, usually residing in Ontario and regularly entitled to administer, is absent from Ontario, the court having jurisdiction may grant a temporary administration to the applicant, or to such other person as the court thinks fit, for a limited time, or subject to be revoked upon the return of such next of kin to Ontario.

Security to be given.

(2) The administrator so appointed shall give such security as the court directs, and shall have all the rights and powers of a general administrator, and shall be subject to the immediate control of the court. R.S.O. 1927, c. 94, s. 33.

Quebec notarial wills.

35. Subject to the provisions of subsection 3 of section 72, a notarial will made in the Province of Quebec may be admitted to probate without the production of the original will upon filing a notarial copy thereof together with the other proper proofs to lead grant. 1929, c. 23, s. 4 (1).

Notice of Applications.

Notice to surrogate clerk, of applications.

36. Notice of every application for the grant of probate or administration shall be transmitted by the registrar, by registered post, to the surrogate clerk by the next post after the application, and the notice shall specify the name and description or addition, if any, of the deceased, the time of his death, and the place of his abode at his decease, as stated in the affidavits made in support of the application, and the name of the person by whom the application is made, and such other particulars as may be prescribed by the surrogate court rules. R.S.O. 1927, c. 94, s. 34.

37. Unless upon special order of the court, no probate or administration shall be granted until the registrar has received a certificate, under the hand of the surrogate clerk, that no other application appears to have been made in respect of the property of the deceased, which certificate the surrogate clerk shall forward as soon as may be to the registrar. R.S.O. 1927, c. 94, s. 35. Certificate from surrogate clerk.

38. All notices in respect of applications shall be filed and kept by the surrogate clerk. R.S.O. 1927, c. 94, s. 36. Surrogate clerk to file notices.

39. The surrogate clerk shall, with reference to every such notice, examine all notices of such applications received from the several registrars, so far as appears to be necessary to ascertain whether or not application for probate or administration in respect of the property of the deceased has been made in more than one surrogate court, and he shall communicate with the registrars as occasion may require in relation to such applications. R.S.O. 1927, c. 94, s. 37. Duty of surrogate clerk with reference to notices.

40.—(1) Where it appears by the certificate of the surrogate clerk that application for probate or administration has been made to two or more surrogate courts, the judges of such courts respectively shall stay proceedings therein, leaving the parties to apply to a judge of the Supreme Court for such direction in the matter as he may deem necessary. Where application made to more than one surrogate court.

(2) On application made to such judge he shall inquire into the matter in a summary way and adjudge and determine what surrogate court has jurisdiction. Judgment as to what court shall have jurisdiction.

(3) The judge may order costs to be paid by any of the applicants, and the order shall be enforced by the Supreme Court. Order as to costs.

(4) The determination of the judge shall be final and conclusive, and the surrogate clerk shall, without delay, transmit a certified copy of the judge's order to the registrars of the surrogate courts wherein such applications were made. R.S.O. 1927, c. 94, s. 38. Judge's decision to be final.

Caveats.

41. Caveats against the grant of probate or administration may be lodged with the surrogate clerk or with the registrar of any surrogate court. R.S.O. 1927, c. 94, s. 39. Lodging.

42. Upon a caveat being lodged, the registrar shall without delay send a copy thereof to the surrogate clerk to be entered among the caveats lodged with him, and, upon notice Notice of caveats.

of an application being received from the registrar of a surrogate court under section 36, the surrogate clerk shall without delay forward to him notice of any caveat that has been so lodged touching such application, and the notice shall accompany or be embodied in the certificate mentioned in section 37. R.S.O. 1927, c. 94, s. 40.

Proof of Wills in Solemn Form.

Citation of persons interested.

43. Where proceedings are taken for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any other contentious cause or matter the validity of a will is disputed, all persons having or pretending to have any interest in the property affected by the will may, subject to the provisions of this Act and to the surrogate court rules, be summoned to see the proceedings, and may be permitted to become parties, subject to such rules and to the discretion of the court. R.S.O. 1927, c. 94, s. 41.

Executors.

Citation to prove or renounce.

Imp. 21 Hen. S. c. 5, s. 6.

44. The court having jurisdiction may summon any person named executor of any will to prove, or refuse to prove, such will, and to bring in inventories and to do every other thing necessary or expedient concerning the same. R.S.O. 1927, c. 94, s. 42.

Consequences of failure to appear.

Imp. 21 and 22, V. c. 95, s. 16.

45. When an executor survives the testator, but dies without having taken probate, and when an executor is summoned to take probate, and does not appear his right in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his property, shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor. R.S.O. 1927, c. 94, s. 43.

Infant Executors.

Where an infant sole executor.
Imp. 38, Geo. III, c. 87, s. 6.

46. Where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will may be granted to him. R.S.O. 1927, c. 94, s. 44.

Power of administrator in such case.

Imp. 38, Geo. 3, c. 87, s. 7.

47. The person to whom such administration is granted shall have the same powers as an administrator has by virtue of an administration granted to him *durante minore aetate* of the next of kin. R.S.O. 1927, c. 94, s. 45.

COPIES OF WILLS.

48. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registrar on payment of the prescribed fees. R.S.O. 1927, c. 94, s. 46.

How copies
obtained.

ADMINISTRATION PENDENTE LITE.

49. Pending an action touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or grant of administration, the surrogate court having jurisdiction to grant administration in the case of intestacy may appoint an administrator of the property of the deceased person, and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of the property; and every such administrator shall be subject to the immediate control and direction of the court, and the court may direct that such administrator shall receive out of the property of the deceased such reasonable remuneration as the court may deem proper. R.S.O. 1927, c. 94, s. 47.

When and
by whom
granted.

Rights and
powers of
the adminis-
trator.

POWERS AND DUTIES OF EXECUTORS, ADMINISTRATORS AND GUARDIANS.

Generally.

50.—(1) Subject to the provisions of subsection 3, where a person dies intestate, or the executor named in his will refuses to prove the same, administration of the property of the deceased may be committed by the surrogate court having jurisdiction, to the husband, or to the wife, or to the next of kin, or to the wife and next of kin, as in the discretion of the court shall seem best, and where more persons than one claim the administration as next of kin who are equal in degree of kindred to the deceased, or where only one desires the administration as next of kin, where there are more persons than one of equal kindred the administration may be committed to such one or more of such next of kin as the court may think fit.

To what per-
sons ad-
ministration
shall be
granted.
Imp. 31.
Edw. 3, St.
1, c. 11, 21.
Hen. 8, c. 3,
s. 2.

(2) Subject to subsection 3, where a person dies wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof, or an executor willing and competent to take probate and the persons entitled to administration, or a majority of such of them as are resident in Ontario, request that another person be appointed to be the administrator of the property of the

Appointment
at request
of parties
interested.

deceased, or of any part of it, the right which such persons possessed to have administration granted to them in respect of it shall belong to such person.

General power as to appointment of administrator under special circumstances.

(3) Where a person dies wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Ontario, and it appears to the Court to be necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the property of the deceased, or of any part of such property, other than the person who if this subsection had not been enacted would have been entitled to the grant of administration, it shall not be obligatory upon the court to grant administration to the person who if this subsection had not been enacted would have been entitled to a grant thereof, but the court may appoint such person as the court thinks fit upon his giving such security as the court directs, and every such administration may be limited as the court thinks fit.

Appointment of trust company.

(4) A trust company may be appointed as administrator under subsection 2 or subsection 3, either alone or jointly with another person. R.S.O. 1927, c. 94, s. 48.

After grant of administration no person to act as executor.

51. After a grant of administration no person other than the administrator or executor shall have power to sue or prosecute any action, or otherwise act as executor of the deceased as to the property comprised in or affected by such grant or administration, until such administration has been recalled or revoked. R.S.O. 1927, c. 94, s. 49.

Administration limited to personal estate.

52. A person entitled to letters of administration to the property of a deceased person shall be entitled to take out such letters limited to the personal estate of the deceased, exclusive of the real estate. R.S.O. 1927, c. 94, s. 50.

Inventories.

Filing inventory. Imp. 21, Hen. 8, c. 5, s. 4.

53.—(1) The person applying for a grant of probate, or administration, shall, before the same is granted, make or cause to be made and delivered to the registrar a true and perfect inventory verified by the oath of the applicant of all the property which belonged to the deceased at the time of his death.

Further inventory of subsequently discovered property.

(2) When after the grant of probate, or letters of administration, any property belonging to the deceased at the time of his death, and not included in such inventory, is discov-

ered by the executor, or administrator, he shall, within six months thereafter, make and deliver to the registrar an inventory, duly verified by oath, of such newly discovered property.

(3) Where the application or grant is limited to part only of the property of the deceased it shall be sufficient to set forth in such inventory the property intended to be affected by such application or grant. Inventory in case of limited grant. R.S.O. 1927, c. 94, s. 51.

54. Where after a grant has issued out of the surrogate court the value of the estate has been increased for succession duty purposes, the executor or administrator shall forthwith pay to the registrar of the surrogate court from which the grant issued, the additional fees that would have been payable at the time of the issue had the value of the estate been placed at the amount to which it has been so increased, and the registrar shall account for such additional fees in the same manner as if the same had been paid at the time of the issue of the grant. Fees on increased valuation. 1929, c. 23, s. 4 (2).

Executor Renouncing.

55. Where a person renounces probate of the will of which he is appointed an executor his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his property shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor. Consequences upon executor renouncing. R.S.O. 1927, c. 94, s. 53.

(NOTE—As to removal of executors, see *The Trustee Act.*)

Rev. Stat.,
c. 165.

Sureties.

56. Except where otherwise provided by law, every person to whom a grant of administration, including administration with the will annexed, is committed shall give a bond to the judge of the surrogate court by which the grant is made, to enure for the benefit of the judge of the court for the time being, or in case of the separation of counties, to enure for the benefit of any judge of a surrogate court to be named by the Supreme Court for that purpose, with a surety or sureties as may be required by the judge, conditioned for the due collecting, getting in, administering and accounting for the property of the deceased, and the bond shall be in the form prescribed by the surrogate court rules, Bonds

and in cases not provided for by the rules, the bond shall be in such form as the judge may by special order direct. R.S.O. 1927, c. 94, s. 54.

When security not required.

57. It shall not be necessary for the Government of Ontario or any department thereof or any Provincial Commission or Board created under any Act of this Legislature to give any security for the due performance of its duty as executor, administrator, trustee, committee, or in any other office to which it may be appointed by order of the court or under the provisions of any statute. 1935, c. 69, s. 2.

Penalty in bonds, etc., and as to dividing liabilities of sureties.

58.—(1) The bond shall be in a penalty of double the amount under which the property of the deceased has been sworn, unless the judge directs that the same shall be reduced, and the judge may also direct that more bonds than one may be given so as to limit the liability of any surety to such amount as the judge deems proper.

When amount of security may be reduced.

(2) The amount of the security may from time to time be reduced by the judge to double the amount of the property remaining in the hands of the administrator, according to the last audit of his accounts by the judge. R.S.O. 1927, c. 94, s. 55.

Power of surrogate courts as to assignment of bonds.

59. The judge on application made in a summary way, and on being satisfied that the condition of the bond has been broken, may order the registrar to assign the bond to some person to be named in the order, and such person shall thereupon be entitled to sue on the bond in his own name, as if the same had been originally given to him, and shall recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the bond. R.S.O. 1927, c. 94, s. 56.

Accounts to be rendered.

60. The oaths to be taken by executors, administrators and guardians, and the bonds or other security to be given by administrators and guardians, and probates, letters of administration and letters of guardianship shall require the executor, administrator or guardian to render a just and full account of his executorship, administration or guardianship only when thereunto lawfully required. R.S.O. 1927, c. 94, s. 57.

New or additional security in certain cases.

61.—(1) Where a surety for an administrator or guardian dies or becomes insolvent or where for any other reason the security furnished by an administrator or guardian becomes inadequate or insufficient, the judge may require other or additional security to be furnished, and if the same is not

furnished as directed by the judge he may revoke the grant of administration or letters of guardianship.

(2) The order may be made by the judge *sua sponte* or on the application of any person interested. R.S.O. 1927, c. 94, s. 58. Order by judge *sua sponte* or on application.

62.—(1) Where a surety for an administrator or guardian desires to be discharged from his obligation, or where an administrator or guardian desires to substitute other security for that furnished by him, the judge may allow other security to be furnished in lieu of that of such surety or of the security so furnished, on such terms as to the judge may seem proper, and may direct that, on the substituted security being furnished and, if the judge so directs, the accounts of the administrator or guardian being passed, the surety or sureties be discharged. Substitution of security.

(2) The application may be made *ex parte* or on such notice as the judge directs. R.S.O. 1927, c. 94, s. 59. How application made.

63. Where an executor or administrator has passed his final account and has paid into court or distributed the whole of the property of the deceased which has come to his hands, the judge may direct the bond or other security furnished by the executor or administrator to be delivered up to be cancelled. R.S.O. 1927, c. 94, s. 60; 1930, c. 21, s. 8 (1). Cancellation of security.

64. Where an executor or administrator has produced evidence to the satisfaction of the judge that the debts of the deceased have been paid and the residue of the estate duly distributed, the judge may make an order directing the bond or other security furnished by the executor or administrator to be delivered up to be cancelled, but where an infant was or is entitled to any part of the estate under such distribution the order shall not be made until after such notice as the judge may direct has been given to the Official Guardian, and where any person who is a patient in an institution under *The Mental Hospitals Act* was or is entitled to any part of the estate under such distribution, the order shall not be made until after like notice has been given to the Public Trustee. R.S.O. 1927, c. 94, s. 61; 1930, c. 21, s. 8 (1). Cancellation of bond of administrator in distribution of estate.

(NOTE—As to bonds of guarantee companies, see *The Guarantee Companies Security Act*.) Rev. Stat., c. 263.

Contestation of Claims Against Estate.

65.—(1) Where a claim or demand is made against the estate of a deceased person, or where the personal representative has notice of such claim or demand, he may serve the Notice of contestation of claim against estate.

claimant with a notice in writing that he contests the same in whole or in part, and, if in part, stating what part and also referring to this section. R.S.O. 1927, c. 94, s. 62 (1).

Application
for order
allowing
claim.

(2) Within thirty days after the receipt of the notice of contestation mentioned in subsection 1, or within three months thereafter if the judge of the surrogate court on application so allows, the claimant may apply to the judge of the surrogate court for an order allowing his claim and determining the amount of it, and the judge shall hear the parties and their witnesses and shall make such order upon the application as he may deem just, and if such claimant does not make such application he shall be deemed to have abandoned his claim and the same shall be forever barred. 1933, c. 63, s. 2.

Claim within
jurisdiction
of division
court.

(3) Where the claim is within the jurisdiction of the division court the application shall be made to a judge of a division court in which an action for the recovery of the claim might be brought, and shall be heard by the judge at the sittings of such court, unless the claimant and the personal representative consent to the application being made to the judge of the surrogate court, and in that case the application may be made to him.

Notice in
such cases.

(4) Not less than seven days' notice of the application shall be given to the personal representative, and where the application is to be made to the judge of the surrogate court, shall also be given to the Official Guardian if infants are concerned, and to such, if any, of the persons beneficially interested in the estate as the judge may direct.

Right of per-
sons inter-
ested to
be heard.

(5) Where the application is made to the judge of the surrogate court, in addition to the persons to whom notice has been given, any other person who is interested in the estate shall have the right to be heard and to take part in the proceedings.

Consent to
jurisdiction
of surrogate
court in
certain cases.

(6) Where the claim, or the part of it which is contested, amounts to \$800 or more, instead of proceeding as provided by this section, the judge shall, on the application of either party, or of any of the parties mentioned in subsection 5, direct the creditor to bring an action for the recovery or the establishment of his claim, on such terms and conditions as the judge may deem just, and provided that the claimant and the personal representative may consent to have the trial before the judge of the surrogate court and in that case the trial shall take place and be disposed of before the surrogate court judge under this section.

(7) Where the claim is within the jurisdiction of the division court the fees and costs shall be according to the tariff of that court and in other cases the fees payable to the judge of the surrogate court and to the registrar shall be the same as are allowed on an audit in an estate of a value equal to the amount of the claim or so much thereof as is contested, and the fees to be allowed to counsel or solicitors shall be fixed and determined by the surrogate judge having regard to the amount involved and the importance of the contest.

Fees and costs when claim within division court jurisdiction.

(8) Where an appeal lies, if the personal representative does not appeal from the order, the Official Guardian or any person beneficially interested in the estate may, by leave of a judge of the Supreme Court, appeal therefrom.

Right of persons interested in appeal.

(9) Where the claimant or the personal representative appeals, the Official Guardian, and any person beneficially interested in the estate, may, by leave of the court which hears the appeal, appear and be heard.

Right of person interested to be heard on appeal.

(10) The provisions of this section shall apply, notwithstanding that the claim or demand is not presently payable, and that, for that reason, an action for the recovery of it could not be brought.

Claims not presently payable.

(11) The judge may order the issue of a commission to take the testimony of any person or party residing out of Ontario.

Application for order allowing commission.

(12) The judge may make an order for the taking of the evidence of any material and necessary witness, residing in Ontario, who is sick, aged or infirm or is about to leave Ontario *de bene esse* and provide to whom notice of such examination is to be given.

Judge may make an order appointing a person to take testimony.

(13) A subpoena may be issued to enforce the attendance of witnesses to give evidence on any proceeding under this section.

Right to issue subpoenas out of court.

(14) The provisions of the rules of the Supreme Court so far as the same are applicable shall apply to every application for such commission or order for examination; the issue, execution, enforcement and return thereof and the judge shall have power to award costs of all such proceedings according to the tariff in force from time to time for like services in country courts.

Rules of Supreme Court shall apply.

(15) Where a claim is established under the provisions of this section no proceedings shall be taken to enforce payment of the same without the permission of the judge.

Permission for enforcement of judgment.

Enforce-
ment of
judgment.

(16) Where permission to enforce payment of a claim is given the order shall be filed in the county court and an execution shall issue as upon a judgment of that court and an order for payment of costs may be entered in the same way. R.S.O. 1927, c. 94, s. 62.

Summary
determina-
tion of dis-
putes as to
ownership.

66. Where the personal representative of any person claims the ownership of any personal property not exceeding in value \$800 and his claim is disputed by any other person, such dispute may be determined in a summary manner and the provisions of section 65 shall *mutatis mutandis* apply. R.S.O. 1927, c. 94, s. 63.

Limitations
Act not to
apply in
certain
cases.

67.—(1) The provisions of *The Limitations Act* shall not affect the claim of any person against the estate of a deceased person where notice of such claim giving full particulars of the claim and verified by affidavit, is filed with the executor or administrator of such estate at any time prior to the date upon which the claim would be barred by the provisions of *The Limitations Act*, provided that where no executor or administrator has been appointed, such notice may be filed in the office of the registrar of the surrogate court of the county where such deceased person resided at the date of his death.

Rev. Stat.,
c. 118.

(2) Where the claim of any person against any other person would be barred by *The Limitations Act* at any time within three months after the death of the person having such claim, such claim shall for all purposes be deemed not to be barred until three months after the date of such death. 1937, c. 75, s. 2, *part*.

Accounts of Executor, Administrator or Guardian.

Accounting
by executor
trustee.

68. An executor, who is also a trustee under the will, may be required to account for his trusteeship in the same manner as he may be required to account in respect of his executorship. R.S.O. 1927, c. 94, s. 64.

Effect of
approval of
accounts by
surrogate
judge.

69.—(1) Where an executor, administrator, trustee, under a will of which he is an executor, or a guardian, has filed in the proper surrogate court an account of his dealings with the estate, and the judge has approved thereof, in whole or in part, if he is subsequently required to pass his accounts in the Supreme Court such approval, except so far as mistake or fraud is shown, shall be binding upon any person who was notified of the proceedings taken before the surrogate judge, or who was present or represented thereat, and upon every one claiming under any such person.

(2) A guardian appointed by the surrogate court may pass the accounts of his dealings with the estate before the judge of the court by which letters of guardianship were issued. Passing accounts by guardians.

(3) The judge, on passing the accounts of an executor, administrator or such a trustee, shall have jurisdiction to enter into and make full enquiry and accounting of and concerning the whole property which the deceased was possessed of or entitled to, and the administration and disbursement thereof in as full and ample a manner as may be done in the Master's office under an administration order, and, for such purpose, may take evidence and decide all disputed matters arising in such accounting subject to appeal. R.S.O. 1927, c. 94, s. 65 (1-3). Powers of judge on passing accounts.

(4) The judge, on passing any accounts under this section, shall have power to inquire into any complaint or claim by any person interested in the taking of the accounts, of misconduct, neglect, or default on the part of the executor, administrator or trustee, occasioning financial loss to the estate or trust fund, and the judge, on proof of such claim, may order the executor, administrator or trustee, to pay such sum by way of damages or otherwise, as he may deem proper and just, to the estate or trust fund; provided that any order made hereunder shall be subject to appeal. Further powers.

(5) The judge may order the trial of an issue of any complaint or claim under the provisions of subsection 4, and in such case he shall make all necessary directions as to pleadings, production of documents, discovery and otherwise in connection with such issue. May order trial and give directions as to pleadings, etc.

(6) Any person interested in the taking of such accounts, or any executor, administrator or trustee against whom any complaint or claim has been made on the passing of such accounts, as provided in subsection 4, may apply to a judge of the Supreme Court for an order removing the proceedings to the Supreme Court, if in his opinion the claim is of such a nature or of such importance as to render it proper that the same should be disposed of by the Supreme Court, and for the purpose of making such application, the applicant shall be entitled to an adjournment of the proceedings in the Surrogate Court. 1933, c. 63, s. 3. Removal to Supreme Court.

(7) The persons interested in the taking of such accounts or the making of such enquiries shall, if resident within Ontario, be entitled to not less than seven days' notice thereof, and, if resident out of Ontario, shall be entitled to such notice as the judge shall direct. Notice to persons interested.

Where person under disability interested.

Rev. Stat., c. 392.

(8) Where an infant or a person of unsound mind is interested, such notice may be served on the Official Guardian, except in the case of a person confined in an institution under *The Mental Hospitals Act*, when such notice shall be served on the Public Trustee and unless such notice is so given the infant or person of unsound mind shall not be bound by the passing of the accounts.

Notice of taking accounts to be served on Public Trustee.

(9) Where by the terms of a will or other instrument in writing under which such an executor, administrator or trustee acts, real or personal property or any right or interest therein, or proceeds therefrom have heretofore been given, or are hereafter to be vested in any person, executor, administrator or trustee for any religious, educational, charitable or other purpose, or are to be applied by him to or for any such purpose, notice of taking the accounts shall be served upon the Public Trustee.

Where person to whom administration granted is not next-of-kin.

(10) Where a person has died intestate in Ontario and administration has been granted to some person, not one of the next-of-kin, and it appears to be doubtful whether the intestate left any next-of-kin him surviving or that there are no known next-of-kin resident in Ontario, notice of taking the accounts shall be served upon the Public Trustee.

Appointment of expert on examination of accounts.

(11) Where accounts submitted to the judge of a surrogate court are of an intricate or complicated character, and in the opinion of the judge require expert investigation, the judge may appoint an accountant or other skilled person to investigate and to assist the judge in auditing the accounts. R.S.O. 1927, c. 94, s. 65 (4-8).

At whose instance executors or administrators compellable to account. Imp. 1 Jac. II, c. 17, s. 6.

70.—(1) Neither an executor nor an administrator shall be required by any court to render an account of the property of the deceased, otherwise than by an inventory thereof, unless at the instance or on behalf of some person interested in such property or of a creditor of the deceased, nor shall such executor or administrator be otherwise compellable to account before any judge.

(2) This section shall apply notwithstanding any provision to the contrary of any bond or security heretofore given by the executor or administrator. R.S.O. 1927, c. 94, s. 66.

ESTATES OF SMALL VALUE.

Fees where estate does not exceed \$400.

71.—(1) Where letters probate, letters of administration or letters of guardianship are sought and the whole property of the deceased or of the ward does not exceed in value \$400,

the registrar shall prepare the necessary papers to lead grant, including all papers and proofs required by *The Succession Duty Act*, and the bond, if any, and administer the necessary oaths; and the total amount to be charged to the applicant for all the proceedings and services shall be \$2.

(2) Where letters probate, letters of administration or letters of guardianship are sought, and the whole property of the deceased or of the ward does not exceed \$1,000, the fees payable to the judge and the registrar shall be one-half of the fees payable according to the tariff in the case of an estate not exceeding in value \$1,000.

Where property does not exceed \$1,000.

(3) If the judge has reason to believe that the property exceeds in value \$1,000, he shall refuse to proceed with the application until he is satisfied as to the real value.

Judge may satisfy himself as to real value.

(4) Subject to the provisions of subsection 1, where the whole property of the deceased, or of the ward, consists of insurance money, or of insurance money and wearing apparel, although general letters probate, general letters of administration or letters of guardianship are sought, the fees payable thereon shall be as follows:—

Fees where estate consists of insurance moneys and wearing apparel.

Where the insurance money does not exceed \$1,000.....	\$4.00
Where the insurance money exceeds \$1,000, but does not exceed \$2,000.....	6.00
Where the insurance money exceeds \$2,000, but does not exceed \$3,000.....	8.00

(5) The Lieutenant-Governor in Council may apportion the fees payable between the judge and the registrar. R.S.O. 1927, c. 94, s. 67 (1-5).

(6) The fees prescribed by this section shall be exclusive of any other fees payable to the Crown, and shall not include the fees payable in respect of contentious business. R.S.O. 1927, c. 94, s. 67 (6); 1937, c. 75, s. 3.

Fees to be exclusive of fees payable to Crown.

ANCILLARY PROBATES AND LETTERS OF ADMINISTRATION.

72.—(1) Where probate or letters of administration, or other legal document purporting to be of the same nature, granted by a court of competent jurisdiction in the United Kingdom, or in any province or territory of the Dominion, or in any other British possession, is produced to, and a copy thereof deposited with the registrar of any surrogate court,

Manner of giving effect to grants of probate, etc., of English or Colonial Courts.

and the prescribed fees are paid as on a grant of probate or administration, the probate or letters of administration, or other document shall, under the direction of the judge, be sealed with the seal of the surrogate court, and shall thereupon, as to personal property, be of the like force and effect in Ontario, as if the same had been originally granted by such surrogate court, and shall, so far as regards Ontario, be subject to any order made by such court, or on appeal therefrom, as if the probate or letters of administration had been granted thereby. R.S.O. 1927, c. 94, s. 68 (1).

Letters of verification in Quebec.

(2) Subject to the provisions of subsection 3, letters of verification issued in the Province of Quebec shall be deemed to be a probate within the meaning of this section. 1929, c. 23, s. 4 (3).

Effect of re-sealing as to real property.

Rev. Stat., c. 164.

(3) Where it has been shown that the will was executed in manner and form sufficient to pass real property within Ontario under *The Wills Act* and the judge so certifies, the sealing shall have the same effect as to real property as if probate had been granted by the said surrogate court.

Security required.

(4) The letters of administration shall not be sealed with the seal of the surrogate court until a certificate has been filed, under the hand of the registrar of the court which issued the letters, that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Ontario, or in the absence of such certificate, until like security is given to the judge of the surrogate court covering the assets in Ontario as in the case of granting original letters of administration. R.S.O. 1927, c. 94, s. 68 (2, 3).

FEEES AND COSTS.

Fees payable to Crown and judge.

73.—(1) The fees payable to the Crown and to the judge shall be payable in law stamps. 1937, c. 75, s. 4 (1).

Affixing stamps.

(2) The stamps, in respect of a grant of probate or administration or guardianship, shall be affixed to the order for the grant, and not to the probate or letters of administration or guardianship. R.S.O. 1927, c. 94, s. 69 (2).

Fees to be on value of whole estate.

74.—(1) The fees payable upon the value of the estate of the deceased shall be calculated upon the value of the whole estate, including the real estate as well as the personal estate, but nothing herein contained shall increase the fees payable to the registrar of the surrogate court and such fees

shall be calculated upon the value of the personal estate of the deceased.

(2) In calculating the value of the real property there shall be deducted the actual value of any encumbrance thereon. Proviso.
R.S.O. 1927, c. 94, s. 70.

75.—(1) Notwithstanding the provisions of any other Act of this Legislature the Lieutenant-Governor in Council may, — Power of Lieut.-Gov. in Council as to,—

- (a) make rules for regulating the practice and procedure in the surrogate courts; Rules of practice.
- (b) make rules and regulations regulating and fixing all fees payable to the Crown, the judge, the registrar, and other officers of the court, and fees and expenses payable to witnesses, in respect of proceedings in such courts; Fees.
- (c) prescribe a tariff of fees to be allowed to solicitors and counsel practising in such courts; Fees of solicitors.
- (d) prescribe forms for use in such courts. 1935, c. 69, s. 3, *part*; 1937, c. 75, s. 5. Forms.

(2) The existing rules, fees payable to the Crown, fees to be allowed to solicitors and forms, shall remain in force until altered, amended or repealed as in subsection 1 provided. 1935, c. 69, s. 3, *part*. Existing rules, tariff and forms.
